

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT BURNS,

Plaintiff,

- against -

GABRIEL SCOTT, et al.,

Defendants.

20-cv-10518 (JGK)

ORDER

JOHN G. KOELTL, District Judge:

The Court has reviewed the Report and Recommendation of Magistrate Judge Cave dated July 29, 2022. The Report recommends that a judgment be entered against defendant Shift Hospitality LLC for \$148,608.10 and for attorney's fees in the amount of \$3,900.00. See ECF No. 32.

No objections have been filed to the Report and Recommendation, and the time for any objections has passed. In any event, the Court finds that the Report and Recommendation is well reasoned and correct. The Court therefore adopts the Report and Recommendation.

The Magistrate Judge has also recommended that the complaint be dismissed against the remaining defendant, Gabriel Scott, for failure to serve the summons and complaint on Scott. The plaintiff has responded that the Scott was served by mail and that proof of service was entered. See ECF No. 37. However, service of the summons and complaint cannot be made simply by

mail, and no proof of service was in fact filed according to the docket sheet. Therefore, the case is dismissed without prejudice as to Scott for failure to serve, and the objection is overruled.

CONCLUSION

The Clerk is directed to enter judgment as follows:

(1) In favor of the plaintiff and against the defendant Shift Hospitality, LLC, as follows:

(a) For damages in the amount of \$148,608.10; and

(b) For attorney's fees in the amount of \$3,900; and

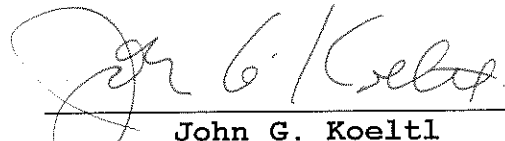
(c) Post-judgment interest will accrue pursuant to 28 U.S.C. 1961; and

(2) Dismissing the plaintiff's claims against defendant Scott without prejudice.

The Clerk is also directed to close all pending motions and to close this case.

SO ORDERED.

**Dated: New York, New York
October 17, 2022**



**John G. Koeltl
United States District Judge**